(16,596.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 383

EDWARD M. WILLIS AND WILLIAM G. JOHNSON, ASSIGNEE, PETITIONERS,

vs.

THE EASTERN TRUST AND BANKING COMPANY.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from supreme court of District of Columbia	1	1
Complaint to justice of the peace	1	1
Plea of title	1	2
Rule prescribing form of plea	3	3
Declaration in plea of title	3	3
Agreed statement of facts	4	4
E. T. & B. Co., Exhibit No. 1—Act to incorporate the Eastern Trust and Banking Co.	8	8
E. T. & B. Co., Exhibit No. 2—Trust deed from American Ice Co. to the Eastern Trust and Banking Co., December 2, 1889	11	11
E. T. & B. Co., Exhibit No. 4—Agreement between Wm. G. Johnson, assignee, &c., and Edward M. Willis, January 29, 1894	19	19
Judgment in No. 36903	21	21
Judgment in No. 36904	21	21
Notice of appeal	22	22
Citation	22	22
Opinion	23	23
Stipulation as to record on appeal	26	26
Clerk's certificate	26	26

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 9, 1897.

	Original.	Print.
Minutes of argument	27	27
Opinion	27	27
Judgment	30	30
Order granting writ of error	30	30
Writ of error	31	31
Citation and acceptance of service	31	31
Bond	32	32
Writ of certiorari	33	32
Clerk's certificate and return	36	33

1 In the Court of Appeals of the District of Columbia.

THE "EASTERN TRUST AND BANKING COMPANY," Appellant,
vs.
EDWARD M. WILLIS and WILLIAM G. JOHNSON, Assignee. } No. 425.

Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO., Plaintiff,
vs.
EDWARD M. WILLIS, Defendant. } At Law. No. 36903.

EASTERN TRUST AND BANKING CO., Plaintiff,
vs.
WM. G. JOHNSON, Defendant. } At Law. No. 36904.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled causes, to wit:

Judgment.

Filed September 29, 1894.

Complaint of Landlord Against Tenant.

36903.

To Lewis I. O'Neal, justice of the peace for the District of Columbia:

Your complainant, Eastern Trust and Banking Company, a corporation duly established under a charter granted by the State of Maine, respectfully represents that it is entitled to the possession of the lands, tenements, and premises lying opposite to square two hundred and seventy (270), in the city of Washington, in the District of Columbia, described by metes and bounds as follows, to wit: Commencing for the same at the southeast corner of said square two hundred and seventy (270), thence southerly with the west line of Thirteenth street to the channel of the Potomac river; thence westerly with the said channel to a point opposite the southwest corner of said square; thence due north to the southwest corner of said square, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and fifty-five (255) feet and one (1) inch to the place of beginning, together with the improvements thereon and the rights and privileges thereto appertaining, and that the same

are detained from it and held without right by one Edward
2 M. Willis, of the District of Columbia, who became and was tenant by sufferance of the undersigned of said lands, tenements, and premises, and whose said tenancy and estate therein has been determined by the service of a thirty days' notice to quit on said Willis. Complainant therefore prays that a summons may be issued to a proper officer of said District, to be served upon said tenant by sufferance, holding over as aforesaid, commanding said tenant to appear before you on a day to be therein named, to show cause why judgment in favor of your complainant for the possession of said lands, tenements, and premises and costs accruing upon this application should not be rendered herein, agreeably to the act of Congress in such cases made and provided.

EASTERN TRUST AND BANKING COMPANY, *Complainant,*
By BENJAMIN F. LEIGHTON, *Its Attorney.*

Subscribed and sworn to before me this 17th day of September, A. D. 1894, by said Benjamin F. Leighton, as attorney for said corporation, complainant.

LEWIS I. O'NEAL. *J. P.* [SEAL.]

Plea of Title.

Filed September 29, 1894.

DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

Before Lewis I. O'Neal, a justice of the peace in and for the District of Columbia, this 27th day of September, A. D. 1894.

EASTERN TRUST & BANKING CO., Plaintiff, *vs.* EDWARD M. WILLIS, Defendant. } No. 15280, 36903.

Plea.

Now comes the defendant in his proper person and, denying that he held the premises as in the written complaint of plaintiff alleged, says that the title to the said premises is in Wm. G. Johnson, under whom defendant claims the said premises, and that the said title hereby claimed is not derived from any letting of the premises by the plaintiff (or by those under whom the plaintiff claims), and is not derived from any forcible entry or forcible detainer.

EDWARD M. WILLIS, *Defendant.*

Subscribed and sworn to before me this 27th day of September, A. D. 1894.

LEWIS I. O'NEAL, *J. P.* [SEAL.]

NOTE.—If the title is in the defendant, he will so state. If it be in another, under whom the defendant claims, he must name that other and say "that the title is in —— ——, under whom he claims the said premises."

3 *Rule Supreme Court District of Columbia Prescribing Above Form of Plea, 2d M. G. T., p. 559.*

RULE.—"In any and every proceeding instituted before a justice of the peace under and by virtue of section 684, chapter XIX, of the Revised Statutes of the United States relating to the District of Columbia, if upon the trial the defendant, in order to avail himself of the provisions of section 687 of the Revised Statutes, wishes to plead title to the premises in himself or in another person under whom he claims the premises, the justice of the peace shall require the plea to be in writing and to be sworn to by the defendant. The plea shall be in the following (as given above) or equivalent form."

Any plea of the title not made as above required the justice shall treat as a nullity. Unless the plea of title be made as by this rule required, the proceedings before the justice shall not be suspended, but the justice shall go on with the trial and render judgment in the matter as the right of the case may require. Upon a plea of title being made by the defendant in conformity with this rule and upon the proceedings being certified to this court by the justice, the cause shall be docketed by the clerk and placed on the trial calendar in the same manner and subject to the same rules as appeals from a justice of the peace. The plaintiff shall, during the term of the circuit court occur-ing next after the pleading of title before the justice, file in said court a declaration making demand for the possession of the premises, and with a description thereof as in ejectment, and serve the defendant with a copy thereof. In any such declaration a general demand shall be sufficient to warrant an assessment of damages and intervening rent, as provided in section 690 of said Revised Statutes.

Declaration in Plea of Title.

Filed October 5, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff, *vs.* EDWARD M. WILLIS, Defendant. } At Law. No. 36903.

The plaintiff sues the defendant to recover the following-described property, situated in the District of Columbia, to wit: All those certain lands, tenement-, and premises lying opposite to square number two hundred and seventy (270), in the city of Washington, in the District of Columbia, described by metes and bonds as follows, to wit: Commencing for the same at the southeast corner of said square two hundred and seventy, thence southerly with the west line of Thirteenth street to the channel of the Potomac river;

thence westerly with the said channel to a point opposite
4 the southwest corner of said square; thence due north to the southwest corner of said square, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and fifty-five (255) feet and one (1) inch to the place of beginning, together with the improvements thereon and the rights and privileges thereto appertaining, in which plaintiff claims a fee-simple, and of which the plaintiff was lawfully possessed on the first day of January, 1894, when the defendant entered the same and unlawfully ejected the plaintiff therefrom and unlawfully detains the same from the plaintiff; and the plaintiff made due demand upon the defendant for the possession of said real estate and premises and does hereby renew such demand, which the defendant refused and still refuses to give, and the plaintiff claims the possession thereof, with the appurtenances, besides the cost of this suit.

B. F. LEIGHTON,
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff,
vs.
EDWARD M. WILLIS, Defendant. } At Law. No.—.

Service of a copy of the above declaration is this 5th day of October, 1894, acknowledged.

CALDERON CARLISLE,
Attorney for Defendant.

Statement of Fact, etc.

Filed November 17, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
EDWARD M. WILLIS. } At Law. No. 36903.

SAME
vs.
WILLIAM G. JOHNSON. } At Law. No. 36904.

The plaintiff and defendants in the above-entitled causes hereby mutually agree that the said causes may be tried together, and that the material facts in the said causes are as follows, to wit:

The plaintiff is a body corporate, organized and doing business under and by virtue of a special charter granted by the legislature of the State of Maine, and having its principal place of business in in the city of Bangor, in said State.

An exemplified copy of said charter is filed herewith, marked

"E. T. and B. Co., Exhibit No. 1," and is to be read and con-
5 sidered in connection herewith and as part hereof. The defendant William G. Johnson is sued as assignee of the American Ice Company, as hereinafter set out, and the defendant Edward M. Willis as the tenant or lessee of the said Johnson. The American Ice Company is a body corporate duly organized under the laws of the State of Maine and had, until the 14th day of October, 1893, its principal place of business at the said city of Bangor, in said State, since which time it has had no office.

That heretofore, to wit, on the second day of December, A. D. 1889, the said American Ice Company executed and delivered to the said trust company a certain deed, which was recorded in Liber No. 1439, folio 417 *et seq.*, one of the land records of said District, and a regularly certified copy of said deed as recorded is filed with this statement of fact, marked "E. T. and B. Co., Exhibit No. 2," and is made a part hereof as fully though incorporated herein *in hæc verba*. The original deed bears the impress of the corporate seal of the American Ice Company and of the Eastern Trust and Banking Company upon or near the names of said companies subscribed to said deed, and it is admitted that said seals were affixed to said deed at the time of or before the execution and delivery thereof and as required by the witnessing clause thereto, and that the recorder failed to note the same upon the record.

The bonds described in said deed were executed and delivered unto the said Eastern Trust and Banking Company, as recited in said deed, and were by the said Eastern Trust and Banking Company delivered to the parties entitled thereto, as required by the terms and provisions of said deed. That said bonds were taken by the parties to whom they were delivered for value in the regular course of business, before maturity, and are now held and owned by them or by their assigns or legal representatives, except as to the first instalment thereof, which fell due in December, A. D. 1892, and was paid, together with the interest then accrued and due on all of said bonds. The next -stalment of said bonded indebtedness, which became due in December, 1893, was not paid at maturity nor was the interest then falling due paid, nor have either of said sums or any part of them been since paid or satisfied in any manner. The parties holding said bonds have not nor have any of them waived their right to said payment in accordance with the tenor and effect of said bonds and of said deed of trust or mortgage. By the terms and provisions of said bonds and of the said deed of trust or mortgage the residue of said bonded indebtedness, to wit, the sum of $35,000, together with the accrued interest thereon, are now and were at the time of the commencement of this suit due and payable.

Thereafter, to wit, on or about the 13th day of October, A. D. 1893, the said American Ice Company, by an instrument of writing of that date, made and delivered in due form of law an assignment of all of its property of what kind soever for the benefit of its creditors unto the defendant William G. Johnson, which said deed of assignment was duly made of record in Book No. 1847, page 211

et seq., one of the land records of said District, a duly certified
6 copy of which is filed with this statement of fact, marked "E. T. and B. Co., Exhibit No. 3," and is to be read and considered in connection herewith and as part hereof so far as it may be material.

The said Johnson accepted said trust and entered upon the discharge thereof, in the course of which he, as such assignee, leased the hereinbefore-described real estate unto the defendant, Edward M. Willis. A copy of said lease is filed herewith, marked "E. T. and B. Co., Exhibit No. 4," and is to be read and considered in connection herewith and as part hereof.

After the default in the payment of said second instalment of bonds and of the interest on the bonded indebtedness, as aforesaid, had continued for the period of more than ninety days the said bondholders, or those holding more than fifty per cent. of the total face value thereof, directed the said trustee to proceed in the execution of said trust in accordance with the terms and provisions thereof, in pursuance of which the said trustee has instituted these proceedings to obtain possession of said property.

The said trustee caused a thirty days' notice to quit to be served upon each of said defendants. The notice to William G. Johnson was in the language following, to wit:

"SIR: You are hereby notified to remove from and quit the land and premises situate in the city of Washington, in the District of Columbia, described as follows, viz: All that piece or parcel of land opposite square two hundred and seventy (270), commencing for the same at the southeast corner of said square two hundred and seventy (270), thence southerly with the west line of Thirteenth street to the channel of the Potomac river; thence westerly with the said channel to a point opposite the southwest corner of said square; thence due north to the southwest corner of said square, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and fifty-five (255) feet one (1) inch to the place of beginning, together with the improvements thereon and the rights and privileges thereunto appertaining, which you now occupy as tenant by sufferance of the undersigned, in your capacity as assignee as aforesaid, at the end of thirty (30) days from the time of the serving of this notice upon you.

(Signed) EASTERN TRUST AND BANKING COMPANY,
A Corporation Duly Established under a Charter Granted by the State of Maine,
By B. F. LEIGHTON, *Its Attorney.*

The notice addressed to Edward M. Willis is the same in every particular except that the words "in your capacity as assignee as aforesaid" are omitted.

Copies of said notices are filed herewith, marked "E. T. and B. Co., Exhibits Nos. 5 and 6," and the same are to be read and considered as a part hereof. The said notices were duly served upon

the defendants on the 30th day of July, A. D. 1894. There-
7 after to wit, on the 17th day of September, 1894, the plaintiffs caused a seven days' summons to be issued by Lewis I. O'Neal, a justice of the peace in and for said District, in accordance with the provisions of the statute in such cases made and provided; and the defendants appeared therein and interposed pleas of title, the defendant Johnson pleading title in himself and the defendant Willis in the said Johnson, whereupon security was given as required by law and the causes were duly certified by the justice to this court for trial, as will appear by the pleadings and proceedings had and taken in said causes.

It is further admitted that after default had been made in the payment of said bonds and the interest thereon, as hereinafter stated, and in pursuance of the direction of the holders of said bonds as aforesaid and of the powers conferred upon and vested in it by said deed of trust or mortgage, the said trustee advertised said property for sale in accordance with the requirements of said deed of trust and exposed the same for sale at public auction in the said city of Bangor, State of Maine, on or about the 4th day of May, A. D. 1894. No sale took place at that time, but the sale was adjourned until September 8th, A. D. 1894, at the same place, at which sale a committee, acting for said bondholders, purchased the above-described real estate for their, the said bondholders', benefit.

The terms of said sale have not yet been complied with and no deed has been made to said purchasers, it being understood and agreed upon between the purchaser and the trustee at the time of said last-named sale that the said trustee should first obtain possession of said property.

Upon the pleadings and proceedings in said causes and the facts hereinbefore stated and admitted, it is by the respective parties to said causes stipulated and agreed that the same shall be, and they hereby are, submitted to the honorable justice holding this court for his determination without a jury, judgment to be rendered by him as to law and justice shall appertain, the right of excepting to the materiality or relevancy or competency of the facts above stated or any of them being reserved, as also the right of appeal.

In witness whereof the said plaintiff and defendant- have, by their respective attorneys, signed this agreement.

B. F. LEIGHTON,
Attorney for Plaintiff.
W. G. JOHNSON,
Attorney for Defendants.

8 E. T. & B. Co., EXHIBIT No. 1.

Filed November 17, 1894.

STATE OF MAINE.

In the year of our Lord one thousand eight hundred and eighty-seven.

An act to incorporate the Eastern Trust and Banking Company.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

SECTION 1. Weston F. Milliken, Thomas J. Stewart, Fred. W. Hill, John Cassidy, David Bugbee, Eugene M. Hersey, John H. Dole, Sprague Adams, James Adams, Josiah C. Towle, William B. Dole, J. Albert Dole, William B. Snow, Julius Waterman, Charles E. Field, Eugene C. Nichols, Frank P. Wood, Jacob Sterns, George H. Grant, Ivory W. Coombs, John Ross, John McCann, Cornelius Murphy, David T. Sanders and Francis H. Clergue, or such of them as may by vote accept this charter, with their associates, successors and assigns, are hereby made a body corporate and politic, to be known as Eastern Trust and Banking Company and as such shall be possessed of all the powers, privileges and immunities, and subject to all the duties and obligations conferred on corporations by law, except as otherwise provided herein.

SECTION 2. The corporation hereby created shall be located at Bangor, Penobscot county, Maine, and may establish agencies in any part of this State.

SECTION 3. The purposes of said corporation and the business which it may perform, are; first, to receive on deposit, money, coin, bank notes, evidences of debt, accounts of individuals, companies, corporations, municipalities and States, allowing interest thereon, if agreed, or as the by-laws of said corporation may provide; second, to borrow money, to loan money on credits or real estate or personal security, and to negotiate loans and sales for others; to guarantee the payment of the principal and interest of all obligations secured by mortgages of real estate running to said Eastern Trust and Banking Company; to issue its own bonds or obligations based upon real or personal property conveyed to it, in trust to secure the payment of such bonds or obligations and the interest thereon; third, to hold for safe keeping, all kinds of personal or mixed property, and to act as agent for the owners thereof, and of real estate for the collection of income on the same, and for sale of same, and to act as agent for issuing, registering and countersigning certificates, bonds, stocks and all evidences of debt or ownership in property; fourth, to hold by grant, assignment, transfer, devise or bequest, any real or personal property, or trusts duly created, and to execute trusts of every description; fifth, to act as assignee,

9 receiver, guardian, executor and administrator, and no surety shall be necessary upon the bond of the corporation unless

the court or officer approving such bond shall require it; sixth, to hold and enjoy all such estates, real, personal and mixed, as may be obtained by the investment of its capital stock or any other moneys and funds that may come into its possession in the course of its business and dealings, and the same sell, grant, mortgage and dispose of, except as provided in section ten: seventh, to do in general, all the business that may lawfully be done by a trust or banking company.

SECTION 4. An administrator, assignee, guardian or trustee, any court of law or equity, including courts of probate and insolvency, officers and treasurers of towns, cities, counties and savings banks of the State of Maine, may deposit any moneys, bonds, stocks, evidences of debt or of ownership in property, or any personal property, with said corporation, and any of said courts may direct any person deriving authority from them, to so deposit the same.

SECTION 5. The capital stock of said corporation shall be one hundred thousand dollars, divided into shares of one hundred dollars each, with the right to increase said capital at any time, by vote of the shareholders, to any amount not exceeding one million of dollars. Said corporation shall not commence business until stock to the amount of one hundred thousand dollars shall have been subscribed for and paid in.

SECTION 6. The shareholders of this corporation shall be individually responsible, equally and ratably, and not one for the other, for all contracts, debts and engagements of said corporation to a sum equal to the amount of the par value of the shares owned by each, in addition to the amount invested in said shares.

SECTION 7. Said corporation, after beginning to receive deposits, shall at all times have on hand in lawful money, as a reserve, not less than twenty-five per cent. of the aggregate amount of its deposits, which are subject to withdrawal on demand; provided, that in lieu of lawful money, two-thirds of said twenty-five per cent. may consist of balances payable on demand, due from any national or State bank.

SECTION 8. The shares of said corporation shall be subject to taxation in the same manner and amount, as are the shares of national banks.

SECTION 9. Said corporation shall be subject to examination by the bank examiner, who shall visit it at least once in every year, and as much oftener as he may deem expedient. At such visits, he shall have free access to its vaults, books and papers, and shall thoroughly inspect and examine all the affairs of said corporation, and make such inquiries as may be necessary to ascertain its condition and ability to fulfill all its engagements. He shall preserve, in a permanent form, a full record of his proceedings, including a statement of the condition of said corporation. A copy of such statement shall be published by said corporation immediately after the annual examination of the same, in some newspaper published in Bangor.

SECTION 10. All property or money held in trust by this corporation shall constitute a special deposit, and the accounts

thereof, and of said trust department, shall be kept separate, and such funds and the investment or loans of them shall be especially appropriated to the security and payment of such deposits, and not be subject to any other liabilities of the corporation; and for the purpose of securing the observance of this proviso, said corporation shall have a trust department in which all business pertaining to such trust property, shall be kept separate and distinct from its general business.

SECTION 11. All the corporate powers of this corporation shall be exercised by a board of trustees, whose number and term of office shall be determined by vote of the shareholders at the first meeting held by the incorporators and at each annual meeting thereafter. The affairs and powers of the corporation may, at the option of the shareholders, be entrusted to an executive board of five members, to be, by vote of the shareholders, elected from the full board of trustees. A majority of said board shall reside in this State.

SECTION 12. This act shall take effect when approved.

In House of Representatives, March 8, 1887.

This bill, having had three several readings, passed to be enacted.

A. P. WISWELL,
Speaker pro Tem.

In Senate, March 9th, 1887.

This bill, having had two several readings, passed to be enacted.

SEBASTIAN S. MARBLE, *President.*

MARCH 10TH, 1887.

Approved.

JOSEPH R. BODWELL, *Governor.*

STATE OF MAINE,
OFFICE OF SECRETARY OF STATE.

I hereby certify that the paper to which this is attached is a true copy from the records of this office.

[SEAL.] In testimony whereof I have caused the seal of the State to be hereunto affixed.

Given under my hand, at Augusta, this nineteenth day of October, in the year of our Lord one thousand eight hundred and ninety-four, and in the one hundred and eighteenth year of the Independence of the United States of America.

S. J. CHADBOURNE,
Deputy Secretary of State.

11 E. T. & B. Co., EXHIBIT No. 2.

Filed November 17, 1894. Rec'd Jan. 13, 1890—10.15 a. m.

American Ice Company
to
Eastern Trust & Banking Co., Tr. } Trust Mortgage.

Liber No. 1439, folio 417 *et seq.* F. J. J.

This indenture made the second day of December, A. D. 1889, between American Ice Company, a corporation duly organized under the laws of the State of Maine, and located at Bangor in the county of Penobscot and State aforesaid, party of the first part, and the Eastern Trust and Banking Company, trustee, a corporation duly established under a charter granted by the State aforesaid, and located at Bangor aforesaid, hereinafter called the trust company, party of the second part, witnesseth,

That whereas said American Ice Company, at a meeting of its directors duly called and held on the 18th day of November, 1889, for the purpose as expressed in the call of providing for the issue of the first-mortgage bonds of the company to the amount and on the terms expressed in the vote copied below, the language of the proposed vote being embodied in the call, adopted the following vote: "That the president and secretary be authorized to make and execute a mortgage of all the property of the company including that to be purchased of E. M. Willis to any person or corporation as trustee to secure an issue of the coupon notes or bonds of the company to a total amount of forty thousand dollars ($40,000). Said notes or bonds and the interest thereon shall be of such denominations, and payable at such times and places and on such terms and conditions as the president and secretary may determine, the said officers are hereby authorized to do all things and execute all papers necessary for carrying out the purposes of this vote." And whereas in pursuance of said vote the American Ice Company acting by its president and secretary, has made its coupon notes or bonds numbered from one to one hundred and seventy-six inclusive, one hundred and twenty of the same being for one hundred dollars each, and fifty-six for the sum of five hundred dollars each, dated December 2nd, 1889, and payable in equal installments of five thousand dollars ($5,000) each in 3, 4, 5, 6, 7, 8, 9 and 10 years from the first day of December, 1889, with interest at the rate of six (6) per cent. per annum payable semi-annually on the first days of June and December in each year at the office of said Eastern Trust and Banking Company in said Bangor, according to the tenor of the coupons attached thereto, all of which bonds are now in the hands of the party of the second part to be authenticated by *b*a certificate signed by it as being secured by these presents, and are held by it for delivery to the parties respectively entitled thereto, the form of each bond, of the coupons, and of the trustee's certificate thereon being substantially as follows, viz:

12 $—. UNITED STATES OF AMERICA. No. —.

American Ice Company First-mortgage 6 per Cent. Bond. Organized under the Laws of Maine.

Authorized issue, $40,000.

American Ice Company organized under the laws of the State of Maine, and having places of business in the city of Bangor, in the county of Penobscot and State of Maine, and the city of Washington in the District of Columbia, promises to pay Eastern Trust and Banking Company or the bearer hereof the sum of — hundred dollars lawful money of the United States at the office of Eastern Trust and Banking Company in the city of Bangor, Maine in — years from the first day of December A. D. 1889, with interest on said sum at the rate of six (6) per cent. per annum, payable semi-annually on the first days of June and December in each year at the office of said Eastern Trust and Banking Company in said Bangor, according to the tenor of the coupons hereto attached upon the presentation and surrender of said coupons respectively. This bond is one of a series of one hundred and seventy-six bonds (176) fifty-six (56) of which are for five hundred dollars each and one hundred and twenty (120) for one hundred dollars each, amounting in the aggregate to forty thousand dollars, numbered respectively from one to one hundred and seventy-six both inclusive, all bearing even date herewith, executed and delivered in pursuance of a vote of the directors of said American Ice Company, duly authorized by the by-laws of said American Ice Company duly adopted on the eighteenth day of November 1889, authorizing the issue of said bonds and the execution and delivery of the mortgage hereinafter mentioned. Payment of this bond and of the coupons attached is secured in the manner and upon the terms therein stated by a first mortgage upon all the real estate wharves, ice-houses, stables, boilers, elevator and machinery situated in the town of Hampden in the county of Penobscot and State of Maine, and in the city of Washington, District of Columbia, bearing even date herewith, executed and delivered by it in pursuance of said vote to said Eastern Trust and Banking Company as trustee for the bondholders, which mortgage has been duly recorded in the registry of deeds for Penobscot county, Maine, and in the registry of land records for District of Columbia. Said mortgage is hereby referred to and the terms thereof made a part of this bond. This bond shall pass by delivery.

In testimony whereof, said American Ice Company has caused this bond to be signed and sealed in its name and behalf by its president and countersigned by its secretary, and the coupons hereto attached to be signed by its secretary the second day of December A. D. 1889.

AMERICAN ICE COMPANY.
—— ——, *Secretary.*
—— —— *President.*

On the back of the bond appears the following endorsement:

13 *Trustee's Certificate.*

The undersigned trustee, named in the within bond and in the mortgage therein referred to, certifies that said mortgage has been delivered to it as trustees and that this bond is one of the series of one hundred and seventy-six (176) bonds secured thereby.

EASTERN TRUST AND BANKING COMPANY,
By —— ——, *Trustee.*

No. —.

American Ice Company First-mortgage 6 % Bond.

Interest payable June 1st and December 1st at the office of Eastern Trust and Banking Company, Bangor, Maine.

All the coupons contain the following:

$—.

On the first day of ——, 18—, American Ice Company promises to pay the bearer — dollars on presentation of this coupon at the office of Eastern Trust and Banking Company, Bangor, Maine, being six months' interest on bond No. —.

Dated December 2nd, 1889.

CHAS. E. FIELD, *Secretary.*

Now then the party of the first part, in consideration of the premises and of the sum of one dollar paid by the party of the second part, receipt whereof is hereby anknowledged, and in order to secure due and punctual payment of said several bonds and of the interest thereon, has given, granted, bargained, sold, transferred and conveyed and does by these presents give, grant, bargain, sell, transfer and convey unto the party of the second part, trustee, as hereinafter provided and its successors in trust, with full power of succession to, and enjoyment of the franchises of the corporation, all its real estate, wharves, ice-houses, boarding-house, stables, boilers, elevator and machinery situated in the town of Hampden in said county of Penobscot and in the city of Washington in the District of Columbia, together with all and singular the privileges and appurtenances thereto belonging. It is understood that all the bonds authorized by the vote herein recited and secured by this instrument shall be delivered to the Eastern Trust and Banking Company as trustee, and by it certified to be of the seriers secured hereby and that all said bond- shall then be returned to and be at the disposition of said American Ice Company. The description of the real estate and rights owned by the American Ice Company which are her-in conveyed is as follows, viz: Two certain lots or parcels of land in Hampden in the county of Penobscot aforesaid bounded and described as follows: That portion of the Cyrus Emery farm which

lies between the Penobscot river and the new county road,
14 being all of said farm lying east of said road, the same measuring nine hundred and sixty (960) feet more or less on said road, and containing thirty (30) acres more or less; and being the same premises conveyed by trustees by said Cyrus Emery's estate by said deed recorded in Penobscot Registry of Deeds vol. 502 page 288, to which deeds as well as to a deed from Augustus J. Emery recorded in said Registry of Deeds vol. 530 page 98 reference is hereby had. A lot formerly a part of the homestead of John Harden described and bounded as follows, viz: Beginning at a stake, on the deviding line between land of said Harden and land formerly of the heirs of Cyrus Emery, thence with right angles with said dividing line twelve and one-half rods more or less to the dividing line between land of said Harden and land of Doddwell; thence on said dividing line to the Penobscot river; thence down said river to said dividing line between land of said Harden and land formerly of the heirs of Cyrus Emery; thence on said Emery's line to the place of beginning. Together with all the buildings and fixtures of the two said above-described parcels of land, being the same premises conveyed by the Penobscot River Ice Company to said American Ice Company by deed dated June 10th, 1889, and recorded in the Penobscot Registry of Deeds, Book 593, page 449. Also all that piece or parcel of land with the improvements thereon lying in the city of Washington, in the District of Columbia, and being opposite square 270 in said city and District, commencing for the same at the southeast corner of square numbered two hundred and seventy, running thence southerly with the west line of Thirteenth street to the channel of the Potomac river, thence westerly with the said channel to a point opposite the southwest corner of said square numbered two hundred and seventy, thence due north to the said southwest corner of said square two hundred and seventy, following the eastern line of what is alleged to be Thirteen-and-a-half street, thence with the southern line of said square two hundred and seventy, two hundred and fifty-five feet one inch to the place of beginning; together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand, either at law or in equity, or otherwise however, of the said parties of the first part of, in, to or out of the said piece or parcel of ground and premises. Being the same premises conveyed by E. M. Willis and another to said American Ice Company by indenture dated December second, 1889, and recorded in land records of the District of Columbia Book 1445 page 16. Together with all the rights and easements, appurtenant, privileges or options, in the matters of wharving or other riparian rights of any kind whatsoever which may hereafter be acquired by said American Ice Company by virtue of the covenants and agreements in said deed of said Willis & *al.* contained. To have and to hold the above-described property, real estate, rights, and franchises with all the privileges and appurtenances thereto belonging unto the party of the second part, its succes-

sors and assigns, to its and their own use and behoof forever,
15 but in trust nevertheless for the equal *pro rata* benefit and security of the holders of the above-mentioned bonds, at whatever period the same may be issued without any preference or priority of one bond over another and for the uses and purposes hereinafter declared.

Article 1. Until default shall be made in the payment of the principal or interest of said bond- or some of them, or in the maintenance of insurance, or in the payment of taxes or assessments as herein provided, or until default shall be made in respect to something by these presents required to be done by said party of the first part, the American Ice Company shall be permitted and suffered to possess, manage, develope, operate and enjoy the plant and property herein conveyed and intended so to be and to take and use the income, rents, issues and profits thereof in the same manner, to the same extent, and with the same effect as if this deed had not been made.

Article 2. If said American Ice Company shall well and faithfully pay the principal sum due on said bonds when the same become payable according to the tenor thereof, together with the interest accrued and due thereon, and shall pay all the coupons attached to said bond and each of them according to the tenor thereof on the presentation of the said coupons respectively and shall well and truly perform, according to the true intent and meaning hereof all the other things required by these presents to be done by said American Ice Company then these presents shall be void, but if default shall be made by said American Ice Company in the payment of said bonds or of any of them at the time they fall due and payable, or if said American Ice Company shall fail to pay said coupons or any of them according to the tenor thereof on the presentation and surrender of the same respectively, or if it shall fail faithfully to observe the requirements made of it by these presents and such default shall continue for the space of ninety days, then the whole amount of the principal of said bonds, together with all accrued and unpaid interest thereon (unless such default be waived by the holders of the majority of the bonds then outstanding as hereinafter provided) shall be deemed immediately due and payable; and it shall be lawful for the trustee to enter into or upon the premises and property hereby granted or intended so to be and to take possession of the whole or any part thereof and to sell and dispose of all and singular the premises, property, rights, interests and franchises hereby conveyed or mortgaged, or intended so to be, or such portion as the trustee may deem necessary at public auction in said Bangor upon such terms as to credit, partial credit and security for payment as it may think proper or expedient having first given public notice of the time and place of the sale or sales by advertisement printed not less than once a week for at least four successive weeks in one or more newspapers printed and published in said Bangor and also in Washington aforesaid. The trustee shall have the right to adjourn such sale or sales from time to time in its discretion giving reasonable notice of each adjournment and after so

adjourning to make the sale at the time and place to which
16 the same may be adjourned; and no other notice or demand whatsoever to or upon the party of the first part shall be necessary. The trustee is hereby further authorized and empowered in its own name or in the name of the American Ice Company to make, execute, acknowledge and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of conveyance of the property so sold; and any sale made as aforesaid shall be a perpetual bar both at law and in equity against the*w* American Ice Company and all persons claiming by, through, or under it from claiming the property, rights, interest and franchises so sold or any interest therein. And for the purposes aforesaid the party of the second part and its successors in the trust are hereby constituted irrevocably the attorney of said American Ice Company. Out of the proceeds arising from such sale or sales the trustee shall first defray the expenses thereof, together with its just and lawful charges for services and expenses, including reasonable allowance for attorney and counsel fees and also all advances and expenses reasonably incurred by the trustee in operating, maintaining, or managing the property or business of the American Ice Company while in possession and all payments made by said trustee for taxes, assessments, insurance and other proper charges upon said premises and property. The balance of said proceeds shall be paid over ratably to and amongst the parties holding said bonds and coupons so far as any be necessary to pay the amounts then due upon the same including the principal and interest*ed* computed to the time of making the payment; and if any of said proceeds then remain, the remainder shall be paid over to said American Ice Company or its assigns. It is hereby declared and agreed that the receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers for his or their purchase-money; and that the bondholders or any number of them or any person in their behalf may purchase at any sale made as aforesaid.

Article 3. The foregoing provision for a sale under the power aforesaid is cumulative with the ordinary remedy of foreclosure by entry or suit therefor, and the trustee hereunder may upon default being made as aforesaid, institute and carry out proceedings to foreclose this mortgage or deed of trust by suit or otherwise in such manner as may be authorized by law for the foreclosure of mortgages of real estate. And the American Ice Company hereby waives any and all rights of sale or redemption now or hereafter provided by the statutes of Maine or of the United States.

Article 4. Before proceeding to foreclose this deed or mortgage whether by sale under said power or otherwise the trustee shall have *to* right first to exact from the bondholders reasonable indemnity against loss and liability that may be incurred by it in so doing and upon the tender by the bondholders or any of them of such reasonable indemnity, whether previously requested of them, or not, it shall be the duty of the trustee in case of any default continuing on the part of said American Ice Company and not waived as here-

inafter provided, to foreclose in such lawful manner as the trustee may deem best.

17 Article 5. No delay or omission by the trustee in exercising the rights and powers herein granted shall be held to exhaust or impair such rights and powers or be construed as a waiver thereof, but it is hereby mutually agreed that the holders of a majority in amount of the bonds at the time outstanding may by and instrument in writing at any time, whether before or after the institution of foreclosure proceedings, waive, or instruct the trustee to waive any default provided always that no such act on the part of the bondholders shall extend to or be taken to effect any subsequent default, or impair the rights resulting therefrom.

Article 6. The American Ice Company agrees at all times upon request to furnish the trustee a schedule showing with reasonable detail the items of the estate, property and other things covered by the lien hereof or intended so to be; and the trustee shall have the power from time to time to release from the lien of this deed any of the property when in its judgment other property of equal value is substituted therefor and subjected to the lien hereof so that such release shall not injure the security or rights of the bondholders.

Article 7. The American Ice Company hereby expressly covenants and agrees to pay any and all taxes, assessments, and governmental charges assessed or laid upon the property herein conveyed or intended so to be and also to keep said premises and property at all times insured in such insurance companies as may be approved by the trustee in such amounts as shall reasonably protect all the insurable property payable in case of loss to the trustee as its interest may appear. In case of loss the insurance money may be applied by the trustee toward the renewal of, or additions to the property destroyed or injured, or at the option of the trustee the money may either be retained and invested in such securities as it approves, as a sinking fund for the redemption of the bonds when due, or be applied to the payment of the principal of such of the aforesaid bonds as may be at the time due and unpaid and of the interest which may at that time have accrued upon the principal and be unpaid, without discrimination or preference; and ratably to the aggregate amount of said unpaid principal and accrued and unpaid interest, rendering the surplus if any to the American Ice Company or to whomsoever may be, lawfully and equitably entitled to receive the same.

Article 8. The trustee shall not be liable for any neglect, mismanagement, or misfeasance or any of its or their agents, attorneys, or servants in relation to taking possession of, controlling, operating, managing, or selling the premises or property aforesaid when said agents and servants have been selected with reasonable care.

Article 9. The American Ice Company agrees hereafter from time to time during the existence of this trust and mortgage to make, execute, acknowledge, and deliver all such further instruments and conveyances as in the opinion of the legal counsel of the trustee may be necessary to facilitate the execution of said trust or

further to secure the rights and remedies of the holders of said bond.

Article 10. The word "trustee" as employed in this instrument shall be taken to mean the trustee hereunder for the time
18 being whether said party of the second part or its successor or successors in said trust.

Article 11. The party of the first part as the agent of the party of the second part shall forthwith cause this indenture to be recorded as a mortgage both of real estate and personal property as may be required by the laws of the State of Maine and of the District of Columbia, so as to preserve and protect the rights of the bondholders and all parties hereto.

In testimony whereof the said American Ice Company has caused these presents and a duplicate hereof to be signed in its name and behalf and its corporate seal to be affixed to this and said duplicate by Francis H. Clergue, its president and Charles E. Field, its secretary, and the said Eastern Trust and Banking Company has caused these presents and said duplicate to be signed in its name and behalf and its corporate seal to be affixed hereto and to said duplicate by George B. Cauney its secretary, the day and year first above written.

AMERICAN ICE COMPANY,
By FRANCIS H. CLERGUE, *President.*
CHAS. E. FIELD, *Secretary.*
EASTERN TRUST AND BANKING COMPANY,
By GEO. B. CAUNEY, *Sec't'y.*

Signed, sealed, & delivered in presence of—
J. R. MASON.

STATE OF MAINE, *Penobscot,* } ss:

DECEMBER 31ST, 1889.

I, John R. Mason, a notary public in and for the county aforesaid do hereby certify that Francis H. Clergue, president of the American Ice Company, and Charles E. Field, secretary of said company, who executed in behalf of said company a certain deed bearing date on the second day of December, A. D. 1889, and hereto annexed, personally appeared before me in said county, both being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be the free act and deed of themselves and of said corporation.

Given under my hand and notarial seal this thirty-first day of December, A. D. 1889.

[NOTARIAL SEAL.] JOHN R. MASON,
Notary Public.

STATE OF MAINE, *Penobscot,* } ss:

I, Charles F. Sweet, clerk of all the judicial courts in said county certify that John R. Mason, Esquire, is and was at the date of h

certificate an acting notary public in and for said county, duly commissioned and qualified to act as such, and that the signature to the paper annexed, purporting to be his, is genuine, and that
19 he is duly authorized and empowered by the laws of said State to administer oaths, to take depositions, acknowledgments of deeds, assignments, and powers of attorney, and that the annexed instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme judicial court for said State this tenth day of January, in the year of our Lord one thousand eight hundred and ninety.

CHAS. T. SWEET, *Clerk.* [COURT SEAL.]

Indorsement.

Fee, $7.00.

This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1439, vol. 417 *et seq.*, one of the land records of the District of Columbia.

Office of the recorder of deeds, Washington, D. C., September 21, 1894.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder of Deeds.

Copy.

E. T. & B. Co., EXHIBIT No. 4.

Filed November 17, 1894.

This agreement, made this twenty-ninth day of January, A. D. 1894, by and between William G. Johnson, assignee of the American Ice Company, of the city of Washington, District of Columbia, of the first part, and Edward M. Willis, of the same place of the second part witnesseth:

That the said William G. Johnson, assignee as aforesaid, under and by virtue of the authority and direction of the supreme court of the District of Columbia, in its order this day passed in the suit of Charles E. Field *vs.* The American Ice Company and others, No. 15063 of the equity docket of said court, in consideration of the rents, covenants and agreements hereinafter mentioned and on the part of the said party of the second part to be paid, observed and performed, hath let and demised and doth by these presents let and demise unto the said party of the second part all that certain real estate, wharves and improvements in the city of Washington, District of Columbia, known as all the property of the American Ice Company lying southwest of Water streets opposite square numbered two hundred and seventy, with the ice-house and wharf situated thereon and the necessary tools and machinery for the discharging and storing of ice, together with the scales and office furniture for the term of one year, beginning therefor on the twenty-ninth day of January, A. D. 1894, and fully to be complete and ended on January 28th, 1895.

To have and to hold the same unto and to the use of the said party of the second part his executors and administrators, yielding and paying therefor monthly and on the last day of each and every month during the continuance of this agreement the monthly rent of one hundred and thirty dollars to the said party of the first part, his heirs, executors and administrators at his or their place of business No. 344 D street, northwest, Washington, D. C., or wher-soever the said office or place of business for the time being may be.

Provided always, and it is hereby expressly stipulated and agreed, that this lease and all rights of the parties hereunder shall cease, and determine in the event of the eviction by the lawful enforcement of the rights of the first-mortgage bondholders of the said American Ice Company or eviction by the lawful enforcements of the rights, if any, of the Government of the United States, or an actual sale under the direction of the court by said party of the first part of said property or any portion thereof.

And it is further covenanted and agreed that should the said monthly rent or any part thereof be and remain unpaid for and during the space of ten (10) days next after the day whereon the same ought to be paid by the terms hereof, although no demand shall have been made therefor, and which demand is hereby expressly waived, then the said party of the first part, his heirs, executors and administrators shall have the right to enter upon said premises and the party of the second part utterly to put out and expel without any notice of thirty days as provided in section 681 of the Revised Statutes of the United States relating to the District of Columbia or any other notice whatsoever; all notice whatsoever, being by the said party of the second part, hereby expressly waived, and this lease shall thereupon, at the option of the party of the first part cease and determine.

It is also hereby covenanted and agreed by the said party of the second part that he shall not assign this lease nor sublet the said premises without the written consent of the party of the first part had and obtained, and that he, the said party of the second part, will at all times during his continuance in the possession of the said premises acknowledge the title and defend the possession of the said party of the first part, his heirs, executors and administrators, and that he will not acquire or seek to acquire title thereto, nor acknowledge title thereto in any other person without first surrendering actual possession thereof to the party of the first part his heirs, executors and administrators, except by the written consent of the said party of the first part, his heirs, executors and administrators.

It is further covenanted and agreed that the said party of the second part shall keep the said premises in the same good condition and repair in which they now are, damage by fire, the elements or trespassers and ordinary wear and tear from reasonable and careful use of the same excepted.

It is further stipulated and agreed that the breach by the party of the second part of any of the covenants, agreements, stipulations

or provisions herein contained, shall give the party of the first part the same right of possession and determination of this lease without notice, as is provided in case of non-payment of rent, and no
21 such breach shall be treated as waived unless expressly so waived in writing, and no waiver of one breach shall operate as a waiver of any other breach.

In testimony whereof, the said party of the first part, as assignee, as aforesaid, and the party of the second part, have hereunto set their hands and seals on the day and year first hereinbefore written, in duplicate.

(Signed) ——— ———. [SEAL.]
EDWARD M. WILLIS. [SEAL.]

WEDNESDAY, *December* 19, 1894.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

EASTERN TRUST AND BANKING CO., Plaintiff, } At Law. No. 36903,
v. Appeals 40.
EDWARD M. WILLIS, Defendant.

And now comes here the plaintiff, by its attorney, Mr. B. F. Leighton, and the defendant, by his attorney, Mr. W. G. Johnson, and submit this case to the court upon an agreed statement of facts, and, the same having been heard and fully understood, the court finds the matters of difference between the parties in favor of the defendant; therefore it is considered that the plaintiff take nothing by its suit, and that the defendant go thereof without day and recover against said plaintiff his costs of defense, to be taxed by the clerk, and have execution thereof.

WEDNESDAY, *December* 19, 1894.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

EASTERN TRUST AND BANKING CO., Plaintiff, } At Law. No. 36904,
v. Appeals 41.
WILLIAM G. JOHNSON, Assignee, Defendant.

And now comes here the plaintiff, by its attorney, Mr. B. F. Leighton, and the defendant, by his attorney, Mr. W. G. Johnson, and submit this case to the court upon an agreed statement of facts, and, the same having been heard and fully understood, the court finds the matters of difference between the parties in favor of the defendant; therefore it is considered that the plaintiff take nothing by its suit, and that the defendant go thereof without day and recover against said plaintiff his costs of defense, to be taxed by the clerk, and have execution thereof.

22 *Notice of Appeal.*

Filed December 22, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO.
vs.
EDWARD M. WILLIS, Defendant. } At Law. No. 36903.

SAME
vs.
WM. G. JOHNSON, Assignee, Def't. } At Law. No. 36904.

The plaintiff appeals from the judgment rendered against it in the above-entitled causes to the Court of Appeals of the District of Columbia.

B. F. LEIGHTON.
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
EDWARD M. WILLIS
and
SAME
vs.
WILLIAM G. JOHNSON, Assignee. } At Law. Nos. 36903 and 36904.

The President of the United States to Edward M. Willis and William G. Johnson, assignee, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 22 day of December, 1894, wherein The "Eastern Trust and Banking Company" is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 22 day of December, in the year of our Lord one thousand eight hundred and ninety-four.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

23 Service of the above citation accepted this 24 day of December, 1894.

WM. G. JOHNSON,
Attorney for Appellee.

(Endorsed:) Nos. 36903, 36904. Law. Eastern Trust and Banking Company *vs.* Edward M. Willis and Wm. G. Johnson, assignee Citation. Issued Dec. 22, 1894. Served cop- of the within citation on —— ——, —— ——, marshal. B. F. Leighton, attorney for appellant.

Opinion.

Filed December 29, 1894.

EASTERN TRUST & BANKING CO. *vs.* EDWARD M. WILLIS. } Law. No. 36903.

SAME *vs.* WILLIAM G. JOHNSON. } Law. No. 36904.

These cases are identical in fact, save as to the property involved, and differ as to defendants. They have been submitted upon an agreed statement of facts, applicable to and filed in each case, for the judgment of the court without a jury. They were instituted under what is known as the landlord & tenant act, to recover possession of the realty described in the proceedings, before a justice of the peace, and were certified to this court by the justice upon a plea of title.

In each case the pl'ff claims a fee-simple by the declaration filed in compliance with the rule of court.

By the agreed statement of facts it appears that the rights of the plaintiff are fixed and determined by a deed of trust from the American Ice Co., a copy of which is filed as an exhibit with the statement.

The deed of trust conveys the property in question to the pl'ff to secure the payment of certain bonds described therein, with accruing interest. By it it is provided that the American Ice Co. shall be permitted and suffered to possess, manage, &c., and to take and use the income, rents, &c., until default be made in the payment of the principal or interest of the bonds. It is also provided that upon default made, &c., it shall be lawful for the trustee to enter into the premises & to take possession of the whole or any part thereof, and to sell & dispose of all or such portion as the trustee may deem necessary, at public auction, in Bangor, upon terms of sale prescribed.

The statement of facts shows that default was made in the payment of the debt secured by the trust, and that the property in question was advertised for sale by the trustee and was sold Sept.

4, 1894, the purchasers being a committee acting for the bond-
24 holders; that the terms of sale have not been complied with, because it had been agreed between the purchasers and trustee that the latter should first obtain possession of the property; that these actions were instituted pursuant to such agreement.

One of the objections urged by the defendants to maintaining these actions is that the pl'ff is a foreign corporation authorized by its charter to conduct its business solely within the State of Maine, and that under the policy of the laws in force in the District of Columbia corporations organized therein were not permitted to exercise the powers of trustee. The charter of the pl'ff, which has been put in evidence, while not containing express authority to transact business out of the State, does not prohibit it, neither did any law in force in the District of Columbia, nor any public policy deduced from general legislation, nor any settled adjudications of the highest courts of this District prohibit the exercise of such powers by a foreign corporation within its limits. Under these circumstances, in harmony with the general law of comity among the States, a foreign corporation may exercise its powers in the District of Columbia.

Bank of Augusta *v.* Earle, 13 Pet., 519.
Runyon *v.* Lessee of Coster *et al.*, 14 Pet., 122.
Cowell *v.* Colo. Springs Co., 100 U. S., 55.
Christian Union *v.* Fount, 101 U. S., 352.

It is also urged as matter of defence that the relation of landlord and tenant did not exist between the pl'ff and def'ts, and that therefore the law did not authorize these actions and the justice of the peace had no jurisdiction of the cause of action.

The Court of Appeals of this District has recently decided that the act of Congress of July 4, 1864, entitled "An act to regulate proceedings in cases between landlord and tenants in the District of Columbia," applied to the case of a purchaser at a sale made by a trustee under an ordinary deed of trust of land as security for debt and grantee of such trustee against the grantor in such deed of trust in possession. That court held that the reservation in the deed of trust of the right of possession to the grantor until default made in the payment of the debt secured operated as *are* demise by the trustee (grantee) to the grantor, and created the relation of landlord & tenant between those parties; that the grantee of the trustee was vested with his rights to the possession and might maintain the action.

Laring *v.* Bartlett, Law Rep., June 21, '94.

In the case of Luchs *v.* Jones, 1 MacA., 345, the general term dismissed the appeal for want of jurisdiction, but the justice delivering the opinion of the court held that under like circumstances the grantor in possession after sale made and deed delivered by the trustee to the purchaser became, by operation of law, tenant by sufferance of the purchaser, & that the landlord & tenant act of July 4, 1864, did not require that the relation of the landlord &

tenant should exist by the convention of the parties in order to give jurisdiction.

25 That decision has never been regarded as authority, and for nearly twenty years this court, both in special & general term, has uniformly held that unless the conventional relations of landlord & tenant existed between the parties a justice of the peace under that act has no jurisdiction of a question of disputed possession, and it has so ruled in cases like that of Luchs & Jones.

See Jennings & Webb, 20 D. C., 317.

Whether the reasoning of the Court of Appeals be approved or not, its conclusion is authoritative with this court, and to me appears to settle the question of the jurisdiction of the justice of the peace in this case, notwithstanding the fact that in the cases at bar the controversy is between the trustee and the grantor in the trust deed, while the case adjudicated was between the purchaser from the trustee and the grantor in the trust deed.

It is further urged in defence that inasmuch as it appears by the agreed statement of facts that the trustee has executed the trust power to the extent of making the sale and has entered into an agreement with the purchasers to obtain possession for them that these actions cannot be maintained.

Whether the deed of trust contemplates the possession of the trust property by the trustee for the purposes of management upon default made in the payment of the debt need not be determined, for the trustee has not assumed to exercise such power. It does in terms authorize the trustee to take possession of the property and to sell such portion as it may deem necessary upon default made by the debtor. Such possession is authorized in aid of a sale to be made by the trustee. The power is to take possession and sell. The trust deed also unquestionably confers authority upon the trustee to sell without first taking possession. This power the trustee has exercised; it has made sale.

The right of the purchaser will be perfected upon the execution & delivery of a deed by the trustee, and that is the sole remaining function to be performed by the trustee under the power of sale. No power is given it to take or acquire possession after sale made at the instance or for the convenience of the purchaser. Its powers are limited to those declared in the trust deed. Those powers cannot be enlarged or added to by subsequent convention between it and the purchaser. It is not indicated that possession is sought in its own right, but at the instance of and in order that when acquired it may be turned over forthwith to the purchaser.

It has the title, for it has not yet conveyed, but, under existing circumstances, it has neither the right of property nor the right of possession. These actions cannot be maintained and judgment must be for the defendant in each case.

1895, January 5.—$50.00 deposited in each case in lieu of bond for appeal.

26 *Stipulation.*

Filed January 7, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO. *vs.* EDWARD M. WILLIS. } At Law. No. 36903.

SAME *vs.* WILLIAM G. JOHNSON, Assignee. } At Law. No. 36904.

The parties to the above-entitled causes, by their respective attorneys, hereby stipulate and agree that the record on appeal to the Court of Appeals of the District of Columbia from the judgment rendered in said causes shall consist of the following, to wit:

1. The complaint before the justice of the peace in No. 36903, the plea thereto, and the declaration filed in said cause. (The complaint, plea, and declaration are the same in No. 36904, the name of the defendant being changed, except as appears in the agreed statement of facts, and are to be considered as if set out *in extenso* on the record.)
2. The agreed statement of facts.
3. The charter of the plaintiff. (Exhibit "E. T. & B. Co. No. 1.")
4. The mortgage or deed of trust in full. (" " " No. 2.)
5. The lease. (" " " No. 4.)
6. And the opinion of the court. (The assignment referred to in the agreed statement of facts was made under the act of Congress approved May 24, 1893.)

B. F. LEIGHTON,
Attorney for Plaintiff.
WM. G. JOHNSON,
Attorney for Defendants.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 49, inclusive, are true copies of the originals in causes numbered 36903 and 36904, wherein The Eastern Trust and Banking Co. is plaintiff and Edward M. Willis and Wm. G. Johnson are the respective defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 24th day of January, A. D. 1895.

JOHN R. YOUNG, *Clerk.*

27 Endorsed on cover: District of Columbia supreme court. No. 425. The "Eastern Trust and Banking Company," appellant, *vs.* Edward M. Willis and William G. Johnson, assignee. Court of Appeals, District of Columbia. Filed Jan. 28, 1895. Robert Willett, clerk.

WEDNESDAY, *April 10th, A. D.* 1895.

THE EASTERN TRUST AND BANKING COMPANY, Appellant,
vs.
EDWARD M. WILLIS and WILLIAM G. JOHNSON, Assignee. } No. 425.

The argument in the above-entitled cause was commenced by Mr. B. F. Leighton, attorney for the appellant, and was continued by Mr. Wm. G. Johnson, attorney for the appellees, and was concluded by Mr. B. F. Leighton, attorney for the appellant.

THE EASTERN TRUST AND BANKING COMPANY, Appellant,
vs.
EDWARD M. WILLIS and WILLIAM G. JOHNSON, Assignee. } No. 425.

Opinion of court per Mr. Justice SHEPARD:

The appellant is a corporation created by act of legislature of the State of Maine, and is fully empowered to receive conveyances in trust and to perform all the duties of trustees.

The American Ice Company is also a corporation of the State of Maine, having its principal office in said State. It owned property in Maine and also certain real estate in the District of Columbia, used in carrying on its business in selling ice in the city of Washington.

To secure a regular issue of $40,000 of bonds, the American Ice Company, on December 2, 1889, conveyed to the Eastern Trust and Banking Company, aforesaid, all of its real and personal property in Maine, and also the lots in controversy, situated in this District, in trust to secure the payment of said bonds.

The trust deed contains the apt words of conveyance usual in such instruments. Right of possession is reserved to the grantor until default in payment of interest, taxes, &c. But it is also expressly stipulated that in case of default in the payment of any interest coupon or coupons, and the continuance thereof for the space of ninety days, the entire debt shall become immediately due and payable, and that "It shall be lawful for the trustee to enter upon the premises and take possession of the whole or any part thereof, and to sell and dispose of all and singular the premises, property, &c., &c., or such portion as the trustee may deem necessary, at public auction, in Bangor, upon such terms as to credit, partial credit and security for payment as it may think proper or expedient, having first given public notice," &c. It is further stipulated that the provision for sale is to be cumulative with the ordinary remedy of foreclosure in equity.

28 The bonds were purchased by different persons for value received, and are still held by them. Default was made in

the payment of interest due December, 1893, and not having been waived, the principal of the bonds became due and payable.

On October 13, 1894, the American Ice Company made an assignment for the benefit of its creditors to William G. Johnson, assignee. The assignee accepted the trust, took possession of the lots in Washington, and leased them to Edward M. Wills.

The bondholders, in pursuance of the terms of the trust deed, directed the trustee to proceed with the execution of the trust. The trustee advertised all of the property for sale at Bangor, in accordance with the terms of the instrument, on May 4, 1894, but adjourned the same to September 8. A committee of bondholders made a bid for the property, the terms of which do not appear, and it was declared sold to them, upon condition that the same should not be completed or title passed until the trustee should first obtain possession of the property.

On July 30, 1894, the trustee served a written notice upon both Johnson, assignee, and his tenant Willis to remove from the premises at the end of thirty days. They refused to surrender possession, and on September 17, 1894, a proceeding was instituted against them by the appellant before a justice of the peace under the landlord and tenant act. Defendants appeared and interposed pleas of title; whereupon, as required by law, the case was certified by the justice of the peace to the supreme court of the District for trial. In said court appellant filed a declaration, upon which issue was duly joined.

Trial by jury was waived, and the case was submitted to the court upon an agreed statement of facts substantially set forth above. The defences made in the court below were: 1. That the action could not be maintained under the landlord and tenant act. 2. That the deed in trust was not executed or certified to so as to be legally registered in the District of Columbia. 3. That the appellant was not competent to take and execute the trusts sought to be created. 4. That the trust had been executed by sale before the institution of the suit, and the right to possession had passed from the trustee to the purchasers. The court overruled all these defences but the last one, and rendered judgment thereon for the defendants, from which this appeal has been prosecuted.

1. The appellees renew in this court, under the agreed statement of facts, the defences made below, save that denying the right of the trustee to maintain the special possessory action provided in the statute (R. S. D. C., sec. 684).

That question has been settled by the decision in Loring *v.* Bartlett, 22 Wash. Law Rep., 398, wherein it was held by this court that purchasers claiming under a sale made by trustees, in accordance with the provisions of an ordinary deed of trust, could maintain the action as provided in that statute.

2. It is unnecessary to pass upon the regularity of the certificate of the clerk of Penobscot county, Maine, to the official character of the notary public of that State, who certified to the acknowl-
29 edgment of the execution of the trust deed, or upon the validity of the record of that instrument in the District of Colum-

bia. The instrument was formally executed by the grantor and the grantee with their respective corporate seals and regularly delivered to the latter, who held it in the execution of the trust. Neither acknowledgment for record, nor record, were necessary to pass the title, or to protect the rights of the beneficiaries of the trust, as against an assignee for the benefit of creditors. Colbert *v.* Baetjer, 22 Wash. Law Rep., 763.

3. The objection that the appellant had no power to take under the conveyance, or to execute the trusts created thereby, is without merit. It was incorporated by special act of the legislature of Maine, and its domicile is in that State. The terms of the charter are ample to cover all the powers that it may exercise under said trust deed, and there is nothing therein to indicate that its corporate powers can only be exercised within the limits of the State of its creation. Appellant had the undoubted right, in so far as its act of incorporation is concerned, to do business in the District of Columbia, to accept trusts to be performed therein, and to sue in its courts. Bank of Augusta *v.* Earle, 13 Pet., 519. The mere fact that the laws prevailing in the District of Columbia, at that time, did not authorize the organization of corporations with the same powers that had been conferred upon appellant by the laws of Maine, is not sufficient to prevent it from the exercise of its powers in said District. A settled policy of prohibition is not to be inferred from the mere absence of legislation upon the subject. This is the well-established doctrine of the Supreme Court of the United States. Cowell *v.* Springs Co., 100 U. S., 55, 59. In that case, it was said: "If the policy of the State or Territory does not permit the business of the foreign corporation in its limits, or allow the corporation to acquire or hold real property, it must be expressed in some affirmative way; it cannot be inferred from the fact that its legislature has made no provision for the formation of similar corporations, or allows corporations to be formed only by general law." See, also, Christian Union *v.* Yount, 101 U. S., 352, 356; Taylor on Corporations, sec. 384, and cases cited.

4. The judgment of the court of which appellant complains proceeds upon the ground that appellant, in the execution of the trust, actually sold the property in controversy before commencing this proceeding; that its powers became exhausted thereby, and that the title and right to the property must be considered as having passed to the bidders at said sale notwithstanding the conveyance had not been executed and delivered. This is a proceeding at law where recovery must be had upon the legal title; still it is not necessary to determine what weight should be given to that point had there been a regular and binding sale by the trustee, lacking completion only in the execution and delivery of the evidence of title.

Passing by the question, which has not been argued, whether a valid sale could have been made under the trust deed, in Maine, of land situated in the District of Columbia, we find in the statement of facts, that the offer for sale was made upon condition that
30 the trustee should first obtain the possession of the property

when only it would be perfected. It is very doubtful, to say the least, if a valid sale could be made upon such condition. If it could not, however, the effect of the attempt would be to avoid the sale and not the condition. Under any view that might be taken, the trustee could not compel the purchaser to accept the conveyance and pay the purchase-money, without the performance of the condition, or the waiver thereof by the purchaser.

Clearly, then, the trust has not been executed, the title has not passed out of the trustee, and the right of possession remains in it still.

For the reason given, the judgment must be reversed, with costs to the appellant, and the cause remanded, with direction to render judgment for it upon the agreed statement of facts, in conformity with this opinion. It is so ordered.

MONDAY, *June 3rd, A. D.* 1895.

THE EASTERN TRUST AND BANKING COMPANY, Appellant, *vs.* EDWARD M. WILLIS and WILLIAM G. JOHNSON, Assignee. } No. 425. April Term, 1895.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said supreme court with directions to render judgment for the appellant upon the agreed statement of facts, in conformity with the opinion of this court.

Per MR. JUSTICE SHEPARD.

June 3, 1895.

MONDAY, *June 17th, A. D.* 1885.

THE EASTERN TRUST AND BANKING COMPANY, Appellant, *vs.* EDWARD M. WILLIS and WILLIAM G. JOHNSON, Assignee. } No. 425.

On motion of Mr. C. Carlisle, attorney for the appellees in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed, on giving bond in the sum of seven thousand dollars.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before

you or some of you, between The Eastern Trust and Banking Company, appellant, and Edward M. Willis and William G. Johnson, assignee, appellees, a manifest error hath happened, to the great damage of the said appellees, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

UNITED STATES OF AMERICA, *ss:*

To The Eastern Trust and Banking Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Edward M. Willis and William G. Johnson, assignee, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 18th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

32 JUNE 18, 1895.

Service hereof this day accepted.

B. F. LEIGHTON,
For Appellees.

Know all men by these presents that we, Edward M. Willis and William G. Johnson, as principals, and Augustus Burgdorf, as surety, are held and firmly bound unto Eastern Trust and Banking Company in the full and just sum of seven thousand dollars,

to be paid to the said Eastern Trust and Banking Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Eastern Trust and Banking Company and the said Edward M. Willis and William G. Johnson, a judgment was rendered against the said Willis and Johnson, and the said Willis and Johnson having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Eastern Trust and Banking Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Willis and Johnson shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

WM. G. JOHNSON. [SEAL.]
AUGUSTUS BURGDORF. [SEAL.]
EDWARD M. WILLIS. [SEAL.]

Sealed and delivered in the presence of—

——— ———.

Approved by—
R. H. ALVEY,
Ch. Justice.

(Endorsed:) No. 425. The Eastern Trust and Banking Company, appellant, *vs.* Edward M. Willis *et al.* Bond on appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed June 18, 1895. Robert Willett, clerk.

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The Eastern Trust and Banking Company is appellant and Edward M. Willis and William G. Johnson, assignee, are appellees, which suit was removed into the said Court of Appeals by virtue of an appeal from the supreme court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said

Court of Appeals and removed into the Supreme Court of the
34 United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

35 [Endorsed:] Supreme Court of the United States. No. 817, October term, 1896. Edward M. Willis *et al.*, *vs.* The Eastern Trust & Banking Co. Writ of certiorari.

36 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, by virtue of the foregoing writ of certiorari and in obedience thereto, do hereby certify that the foregoing pages, numbered from 1 to 32, inclusive, contain a true and complete transcript of the record and all proceedings had in said Court of Appeals in the case of The Eastern Trust and Banking Company, appellant, *vs.* Edward M. Willis and William G. Johnson, assignee, No. 425, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 2d day of June, A. D. 1897.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

37 Endorsed: Case No. 16,596. Supreme Court U. S., October term, 1897. Term No., 383. Edward M. Willis *et al.*, petitioners, *vs.* The Eastern Trust & Banking Co. Writ of certiorari and return. Filed June 7, 1897.